

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ARNOLD F. NASH,)	
)	
Petitioner)	
)	
v.)	Civil No. 96-0222-B
)	
JEFFREY D. MERRILL,)	
)	
Respondent)	

RECOMMENDED DECISION

Petitioner has filed a Petition for Writ of Habeas Corpus by a person in state custody, pursuant to 28 U.S.C. § 2254. He seeks leave to proceed *in forma pauperis*. However, the Court concludes that the Petition should be summarily dismissed for Petitioner's failure to exhaust the remedies available to him in the state courts. 28 U.S.C. § 2254(b)(1). Specifically, Petitioner alleges that his Petition for Post-Conviction Review, in which he sought to raise many of his ineffective assistance of counsel claims, was dismissed for his failure to prosecute due to the ineffective assistance of his post-conviction counsel.

In appropriate circumstances, ineffective assistance of counsel may constitute "cause," perhaps excusing a procedural default in the state courts. *Murray v. Carrier*, 477 U.S. 478, 488 (1986); *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). This is not the case here, however, inasmuch as there is no constitutional right to counsel on post-conviction review. *Coleman*, 501 U.S. at 751 (citing *Pennsylvania v. Finley*, 481 U.S. 551 (1987)).

Nor is this "an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent." *Murray*, 477 U.S. at 496. Petitioner's claims

appear to center exclusively on the alleged improper handling of his case by all participants, from the investigating officers to Petitioner's own attorneys.

Further, Petitioner was convicted on a plea of guilty. Although, in Petitioner's view, he "was placed in a catch 22 situation, forced to plead guilty to a crime he did not commit," there is no factual allegation to support Petitioner's claim of innocence. According to Petitioner, the reason he found himself in such a position was because his attorney inadequately handled an unsuccessful motion to suppress evidence. In the end, Petitioner sets forth no colorable claim of innocence in this pleading.

Conclusion

For the foregoing reasons, I hereby recommend Petitioner's Petition for Writ of Habeas Corpus be DISMISSED, and the Writ DENIED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine on September 30, 1996.